

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK (BROOKLYN)

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:
BARTLETT, et al., :Case No.: 19-cv-0007
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Plaintiff, :Brooklyn, New York
:
v. :November 18, 2024
:
SOCIETE GENERALE de BANQUE :12:08 p.m. - 1:03 p.m.
:
au LIBAN S.A.L., et al.; :
:
Defendants.:
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TRANSCRIPT OF STATUS CONFERENCE HEARING
BEFORE THE HONORABLE TARYN A. MERKL
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1	Appearances (Continued)
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2 For Defendant: DECHERT, LLP
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4 Julia Shea, Esq.
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1 THE DEPUTY CLERK: This is civil cause for
2 a discovery conference; Docket: 19-cv-0007,
3 Bartlett, et al. v. Societe Generale de Banque au
4 Liban S.A.L., et al.

5 Before asking the parties to state their
6 appearance, I would like to note the following:

7 Persons granted remote access to
8 proceedings are reminded of the general prohibition
9 against photographing, recording and rebroadcasting
10 of court proceedings. Violation of these
11 prohibitions may result in sanctions, including
12 removal of court-issued media credentials, restrict
13 entry to future hearings, denial of entry to future
14 hearings, or any other sanctions deemed necessary by
15 the Court.

16 Will the parties please state their
17 appearances for the record, starting with the
18 plaintiff.

19 MR. OSEN: Good afternoon, Your Honor.
20 It's Gary Osen on behalf of the Bartlett plaintiffs.
21 I'm joined today by my colleagues, Ari Ungar, Cindy
22 Schlanger, Michael Radine, as well as my colleague
23 from Motley Rice, John Eubanks.

24 THE COURT: Great. Good afternoon to
25 everybody. And I'm just not -- I was curious, who

1 is taking the lead on behalf of the defendants
2 today?

3 MR. MCGINLEY: Hi, Your Honor. This is
4 Mike McGinley from Dechert LLP. We represent BLOM
5 Bank, Fransabank and Bank Audi, and I've been
6 designated to take the lead. But, obviously, if any
7 of my colleagues from the other banks wants to add
8 or correct anything I have to say, they're always
9 welcome to jump in.

10 THE COURT: All right. Well, thank you for
11 that, Mr. McGinley. And I certainly want to make a
12 full record of everybody who is here. I'm not
13 trying to call folks out of order. I just wanted to
14 know who is taking the lead. So I'm just making
15 sure we get all of the appearances.

16 So let me just get back to the docket. I
17 navigated away to look something up in the *Miller*
18 case and lo and behold, I thought I had the docket
19 up, it's back up. But, as you know, it takes a
20 while to get to the defendants. So just give me one
21 second.

22 MR. MCGINLEY: And, Your Honor, while
23 you're doing that, I can introduce my colleagues,
24 Jonathan Streeter and Tamer Mallat and Julia Shea
25 from Dechert.

1 THE COURT: All right. Good afternoon to
2 all of you.

3 MR. OSEN: Thank you, Your Honor.
4 Judge ...

5 THE COURT: Feels like ECF is misbehaving
6 on purpose. Just give me one more second.

7 All right. Finally, we got to the
8 defendants. All right. So we have gotten
9 Mr. McGinley's clients.

10 Who is here on behalf of Societe Generale?

11 MR. SULLIVAN: Good afternoon, Your Honor.
12 Michael Sullivan and Brian Leske from the Ashcroft
13 firm.

14 THE COURT: Okay. And are you representing
15 anybody else for today's purposes?

16 MR. SULLIVAN: We are not, Your Honor, just
17 SGBL.

18 THE COURT: All right. And we've already
19 covered Fransabank, correct, Mr. McGinley?

20 MR. MCGINLEY: That's correct, Your Honor.

21 THE COURT: Middle East Bank Africa S.A.L.?

22 MR. BERGER: Good afternoon, Your Honor.
23 This is Mitchell Berger from Squire Patton Boggs and
24 we represent MEAB Bank. I'm here with my
25 colleagues, Gassan Baloul, Joseph Alonzo and Alex

1 Hyman. And if Your Honor is checking through the
2 docket, we also represent Fenicia Bank and LGB Bank,
3 formerly known as Lebanon & Gulf Bank.

4 THE COURT: Okay. Thank you for that.
5 We've already covered BLOM Bank in the form of
6 Mr. McGinley's team.

7 And on behalf of Byblos Bank, who do we
8 have?

9 MS. CHAIFETZ: Good afternoon, Your Honor.
10 Samantha Chaifetz from DLA Piper. I'm joined here
11 today by my colleagues, Anthony Coles and Erin
12 Collins.

13 THE COURT: All right. Good afternoon to
14 all of you. And --

15 MS. CHAIFETZ: I'll note the other banks we
16 represent.

17 THE COURT: Oh, please, yes.

18 MS. CHAIFETZ: We represent Bank of Beirut
19 and Bank of Beirut and the Arab Countries, BBAC.

20 THE COURT: And for Bank Audi S.A.L.?

21 MR. MCGINLEY: That's us, Your Honor.
22 Dechert represents Bank Audi as well.

23 THE COURT: Yes, I see you. You're third
24 on the list.

25 All right. Bank of Beirut we just covered,

1 so thank you for that, Ms. Chaifetz.

2 Did we get a Lebanon & Gulf Bank
3 representative yet?

4 MR. BERGER: Yes, Your Honor. Mitchell
5 Berger, Squire Patton Boggs, Lebanon & Gulf Bank,
6 now known as LGB Bank.

7 THE COURT: Okay. Yes. I have you here
8 for all three, right; MEAB, Fenicia and LGB?

9 MR. BERGER: Yes, Your Honor.

10 THE COURT: Thank you.

11 And you have Banque Libano-Française,
12 Mr. McGinley, or no?

13 No. It's from Mayer Brown.

14 Do we have anybody here for Banque Libano?

15 MR. HARRINGTON: Yes, Your Honor. I
16 apologize. This is Brendan Harrington. I'm
17 representing -- or here from Mayer Brown,
18 representing Banque Libano-Française today.

19 THE COURT: Okay. Thank you.

20 And Jammal is excused from discovery. That
21 might be it -- is somebody here from -- Mr. Baasiri
22 is out of the case. Is there anybody who needs to
23 state their appearance who hasn't?

24 All right. I think that's everybody.
25 Although I don't know that I've gotten quite

1 everybody, but I trust that Ms. Chan and my very
2 capable law clerk have.

3 So we're here, as the parties know, in an
4 effort to try to figure out, sort of, a reasonable
5 plan with regard to attempting to continue the
6 discovery in this case. I received a letter from
7 the Osen firm in mid-September requesting that we
8 set at that point what would have been, in my view,
9 a very short deadline for the determination or
10 reporting back to the Court of whether or not the
11 defendants were going to comply with the March 31,
12 2023 memorandum and order overruling the Lebanese
13 Bank secrecy objections.

14 At that point, that would have given them
15 11 days. I declined to enter that deadline. And
16 upon reviewing the motion, determined that it would
17 really be best if we got together for a conference
18 to discuss each side's proposed paths forward and
19 try to reach some sort of reasonable conclusion as
20 to what makes logistical and practical sense in
21 trying to continue the discovery here.

22 I don't know whether or not the discovery
23 schedule is impacted at all based upon the deadline
24 that had been sought to respond to the third amended
25 complaint, or whether or not the substantive

1 proceedings will impact the discovery schedule, and
2 if so, in what way. So I'm curious to hear the
3 parties' thoughts on that as well.

4 So, Mr. Osen, this was, of course,
5 initiated with your letter, so would you like to
6 start, sir?

7 MR. OSEN: Sure. Thank you, Your Honor.
8 This is Gary Osen; again, Osen LLC for the
9 plaintiffs.

10 Just, sort of, to frame where we are
11 procedurally, Your Honor, of course, overruled the
12 bank secrecy objections in March of 2023. That was
13 followed by a narrow production order for purposes
14 of allowing the defendants to seek letters rogatory
15 from Lebanon. The defendants did not seek review of
16 Your Honor's ruling overruling bank secrecy
17 objection, so that is the law of the case here.

18 So the issue then comes to what happens
19 next. And, of course, this past summer, after
20 approximately a year, the Lebanese government
21 advised that they were declining the Court's request
22 under letters rogatory, and that then led to the
23 letter exchange that Your Honor referenced earlier.

24 So the defendants have indicated to us that
25 they are in the process of -- at the time, they were

1 about to commence the waiver process. They're now
2 in the middle of that process, but only as it
3 applies to the entities listed in the letters
4 rogatory request, not based on a larger universe of
5 relevant account holders or potential account
6 holders.

7 So, first and foremost, and keeping, I
8 think, with what was done in the *Miller* case, *Miller*
9 *v. Arab Bank*, as well as other bank secrecy cases
10 that we've been involved with, the first step after
11 the process is -- come to this, sort of, standpoint
12 is for the Court to issue a production order that is
13 not a narrow one, tailored for the purposes of
14 letters rogatory, but one which sets forth basically
15 what the defendants' obligations are under Rule 26
16 discovery.

17 And so we have proposed to the defendant
18 that we set a schedule to meet and confer. We would
19 begin by providing them with a proposed production
20 order. They would then review it, raise any
21 objections. We meet and confer. And then at the
22 end of that process, we would either submit a joint
23 production order, which we've achieved in a couple
24 of cases, or competing proposed orders, and then the
25 Court can decide what the scope of discovery ought

1 to be. And that process then allows the defendant
2 to fully pursue waivers, not just for a narrow
3 subset of customers, but for all of the Rule 26
4 discovery that is implicated in this case.

5 And so that is essentially the proposal we
6 have on the table. We've had some limited
7 discussion about that. Happy to elaborate further,
8 but that's, I think, the sort of baseline request
9 that we have.

10 THE COURT: All right. So I have reviewed
11 the *Miller* order that you made reference to in the
12 letter. And I think one of the challenges that we
13 have in this case, Mr. Osen, as compared to *Miller*
14 is really, on some level, volume.

15 And can you shed a little bit of light on
16 what you would expect this broader order to cover,
17 because my recollection is that your original
18 proposed, sort of, annexes or appendices to the
19 letters rogatory requests to Lebanon would have
20 involved hundreds and hundreds of names from every
21 single entity, regardless of knowledge of whether
22 they had any relevant records. And I expressed
23 concerns about that back in that process as to
24 whether or not this was, sort of, a blunderbuss
25 approach. And I still have those questions.

1 I have reviewed the annexes that are
2 attached to the order compelling production that was
3 issued on April 14, 2023 in the *Miller* case. And
4 that's at case number: 18-cv-2192. It's assigned to
5 Judge Gonzalez and Judge Kuo, and Judge Kuo issued
6 the order. And here, you know, the lists are, you
7 know, a little bit more reasonable in length. You
8 know, the longest list seems to be about 75 names or
9 so.

10 So how does the volume compare in *Miller* to
11 this case, Mr. Osen, and how would we manage this?

12 MR. OSEN: So, first of all, Your Honor, I
13 think the -- if I remember correctly -- and it's
14 been a while, but I think the list in *Miller* of
15 customers that were sought was, I think, 687. Don't
16 hold me to that because I don't have it at the top
17 of my head, but that number stands out to me.

18 THE COURT: That may be the total.

19 MR. OSEN: Yeah.

20 THE COURT: But the specified lists of
21 production with regard to each category as to
22 specific defendants and specific groups seem more
23 tailored than the original annexes that you included
24 here, but you know the facts better than me.

25 MR. OSEN: Yeah. Yes, Your Honor. It's

1 obviously a different case when you're dealing with
2 one defendant rather than 11 in discovery here, so
3 that's certainly true.

4 One of the differences between *Miller* and
5 this case is that *Miller*, of course, was a sort of
6 follow-on case to the *Linde v. Arab Bank* case. And
7 if you -- if Your Honor looks at the production
8 order, I think it's May 7, 2007 -- we obviously can
9 provide that to the Court -- in *Linde* that was far
10 more expansive than anything contemplated here, and
11 that was for just one defendant.

12 But it got narrowed in *Miller* because we
13 had the benefit of at least some discovery in the
14 *Linde* case and, therefore, could identify with much
15 greater specificity, even at the discovery stage,
16 where the likely responsive accounts were going to
17 be. Here, obviously, we have some indication of
18 that. As a result of third-party discovery in this
19 case, we can, sort of, confirm some subset of the
20 account holders. But, as is inevitably the case in
21 most Rule 26 discovery, we know what the universe
22 of, in this case, Hezbollah-related persons and
23 entities are, including many dozens, if not
24 hundreds, that have been designated by the United
25 States government. But we can't know without

1 discovery which bank holds which accounts.

2 And, of course, we tried just for --
3 originally -- Your Honor may vaguely recall, we had
4 originally tried through interrogatories to get some
5 kind of sense of the quantity, the number of account
6 holders, without disclosure of the specific names.
7 That process got derailed and ultimately postponed
8 while this bank secrecy issue was being resolved.
9 So it's hard to know how many customers.

10 And, of course, there's another wrinkle.
11 And I apologize, Your Honor, because I realize this
12 isn't normal discovery. But keep in mind that, in a
13 typical case where we're engaged with a defendant,
14 there's, sort of, an initial process of figuring out
15 what search terms are going to be used on what
16 systems to identify the account holders, and, sort
17 of, all that kind of ESI discovery process that we
18 all know and love.

19 That's not going to happen here because
20 obviously we won't -- for bank secrecy reasons,
21 there won't be a full exchange on, you know, which
22 accounts are being searched, how it's being
23 searched, you know. There's inevitably less
24 transparency when you have bank secrecy
25 considerations.

1 So the best that we can do, and this is
2 what we suggested to the defendant, is that we would
3 take the third amended complaint, take the entities
4 that are identified in there and work off of the,
5 sort of, major Hezbollah operatives and
6 organizations that are identified in the complaint,
7 come up with a revised list based on the third
8 amended complaint.

9 And then, you know, they can tell us -- I
10 know each bank previously in response to our
11 discovery requests, had slightly different responses
12 about how they keep records, how many paper records
13 they have versus electronic records and so forth.
14 So we'd have to have that discussion to make sure
15 that we're simultaneously capturing what we need,
16 but also recognizing the burden that that entails.

17 But the key ingredient to this is that the
18 burden really only applies if the banks intend to
19 comply and produce records. If they stand on their
20 bank secrecy objections after being overruled, then
21 ultimately the production order should be as
22 comprehensive as possible because it's going to
23 reflect the universe of what Rule 26 allows without
24 consideration of, you know, whether you're trying to
25 retrieve paper records from an archive because

1 you're not doing it anyway. So there's no burden
2 other than the search process for the account
3 customer name.

4 So it's all very unusual and, sort of,
5 outside of the box. Obviously, we've done it in a
6 number of different cases, so we have some
7 familiarity with the challenges presented, including
8 in Miller. But at the end of the day, the way that
9 the Court both in *Linde* and then ultimately in
10 *Miller* approached it was to give us basically what
11 we asked for with the determination, of course, that
12 the requests were appropriate under Rule 26. And
13 then, you know, what the defendants do with that,
14 whether it's in the form of waivers or ultimate
15 production is obviously in their hands and in the
16 hands of their customers.

17 I'll just say to, sort of, wrap this up,
18 that, you know, ultimately the best outcome for us
19 is for the defendants to come back and say, yeah, we
20 have tons and tons of records and we're going to
21 produce them, but this category or that category is
22 too burdensome because, you know, it's too remote to
23 search or it's too this or that. That's the sort of
24 normal discovery conversations that we like to have.

25 In the bank secrecy context, that generally

1 doesn't occur unless the defendant, as it did in the
2 *Crédit Lyonnais* case and the *NatWest* case, after
3 being -- having their objections overruled, decide
4 to produce.

5 So when that happens, you get more of a
6 conventional discovery process. And when that
7 doesn't happen, then, you know, we take what we can
8 get. If there's a waiver, we'll take the records
9 that are produced. But at the end of the day, the
10 Court then has to consider what the prejudice is to
11 the defense -- to the plaintiffs in not having the
12 majority of the records, and has to then consider
13 what remedy to fashion for that prejudice.

14 THE COURT: Understood. All right.

15 So, Mr. McGinley, we've talked about a lot
16 of things, me and Mr. Osen. I'm sure you have a lot
17 of responses and thoughts. I am curious what your
18 views are on one of the top questions that the
19 plaintiff raised, which is the anticipated timing by
20 which the defendant banks will be prepared to advise
21 the Court about your intentions vis-à-vis complying
22 with the March 31, 2023 order overruling the bank
23 secrecy objections.

24 And, of course, that pertains to somewhat
25 more limited set of documents than was perhaps

1 anticipated by the plaintiffs at the outset, but the
2 reasoning would attend to a larger set if the
3 plaintiffs were able to establish relevance and
4 proportionality.

5 So, Mr. McGinley, where are the banks? Are
6 you prepared to represent, kind of, everyone's
7 thoughts on the bank secrecy question, or do I need
8 to go bank by bank?

9 MR. MCGINLEY: So I think, Your Honor, I
10 can offer a response to Mr. Osen and address that
11 question, I think, in part through what our proposal
12 is in terms of where we go next, because I think
13 that our approach is that we fully intend to and
14 want to be able to achieve 100 percent compliance
15 with the Court's discovery order, without having to
16 make the decision necessarily of whether we will
17 unilaterally -- whether any bank unilaterally will
18 have to breach or otherwise deal with bank secrecy.

19 And the reason why we think that's possible
20 is we've had a fair amount of success with the
21 waiver process. I'm prepared to talk to you in
22 detail about that. I think in the Court's order,
23 you asked us to come prepared to do so. We also
24 think that there may be additional steps, even after
25 the waiver process has played out, that would allow

1 us to perhaps go back to the SIC with more targeted
2 and detailed information about specific accounts
3 where there wasn't waiver, such that we may be able
4 to obtain waiver from the SIC and get -- and
5 hopefully get to a point where the universe is
6 either null for maybe some banks or that it's so
7 small that an informed decision can be made at that
8 point rather than in, as Your Honor said, a sort of
9 blunderbuss manner of, well, will we stand on bank
10 secrecy overall.

11 And I think that what the Court set forth
12 in your discovery order last year was this balanced
13 and phased approach that took into account the fact
14 that the plaintiffs' proposal at that time, and I
15 think this new proposal, is just disproportionate.

16 And I think if you look at Your Honor's
17 opinion, pages 17 and 18, the reason why we ended up
18 with Annexes A and B, which, you know, largely
19 derive from the plaintiffs' own indications, is that
20 the Court said, you know, because we're dealing with
21 bank secrecy, we're going to pursue information on
22 these limited subsets.

23 And so what we've done is -- our clients
24 have sought waivers from those individuals and
25 customers, and we've had some success, as I

1 indicated. Obviously, the last two months in
2 Lebanon have changed dramatically, and the process
3 has become slightly more difficult and -- or at
4 least it takes longer than we were originally seeing
5 over the summer, so we would ask for some
6 understanding in terms of timing on that basis.

7 If the Court would like, I can give a
8 top-level indication of where things stand with
9 waivers at the moment, but I don't want to jump
10 ahead if Your Honor has other questions.

11 THE COURT: I'd certainly welcome a
12 top-level indication.

13 MR. MCGINLEY: So, as of today, the moving
14 defendants have secured signed customer waivers from
15 67 customers listed in the Annex A and Annex B of
16 the Court's order. I can tell you that there's a
17 number of alleged customers in those annexes that
18 the defendants have determined were not account
19 holders of theirs. It's a little trickier to
20 identify who those are because identifying who those
21 are can, in turn, then reveal who were account
22 holders and potentially in violation of bank
23 secrecy.

24 So we do hope at some point to be able to
25 share that more detailed information with the other

1 side in an appropriate fashion. But if you take
2 into account -- by our calculations, if you take
3 into account -- essentially, remove those who we
4 think were not account holders, we're seeing a
5 success rate somewhere in the 25 to 30 percent. And
6 that's not to indicate that the remaining alleged
7 customers have all said no.

8 In fact, the vast majority of the folks who
9 fall into the bucket, who didn't grant waivers, we
10 just have not been able to locate or contact despite
11 diligence. In some instances, there are defunct
12 businesses or individuals who have become aged. So
13 there are various factors at play.

14 We think that continuing the waiver process
15 will continue to yield fruit. I can say just with
16 respect to one of my clients in the past week, we've
17 secured two more waivers. And with respect to
18 another one of my clients, we have -- they have
19 received verbal indications that a customer would
20 waive, but because of the conflict and displacement
21 and other logistical factors, have not been able to
22 obtain written confirmation yet.

23 So we think this process is working and is
24 working in a way that perhaps the Court and the
25 parties didn't contemplate last year at the time of

1 the discovery order. We also think that if we
2 continue down this road, we can get to a point where
3 maybe we have a much narrower list, where we can go
4 back to the SIC.

5 As Your Honor I'm sure noticed, and we
6 pointed out in our letters, the response from the
7 SIC has a paragraph that says that if the Court --
8 or we think if the parties, frankly, can come back
9 to it with more detailed allegations about specific
10 individuals, that it would consider those, but
11 that -- you know, presented only with the names,
12 that it wasn't choosing to waive bank secrecy at
13 that time.

14 So we're -- we have confidence that we can
15 get to a very small universe, if not a null set,
16 with respect to some or all defendants that would
17 prevent the need to have some kind of grand
18 declaration of whether or not defendants stand on
19 bank secrecy.

20 And I think -- oh, and the other thing I
21 would say, and we've said this to plaintiffs, is
22 that we will begin identifying those who waived. In
23 fact, for our three clients, we gave those names
24 this morning to Mr. Osen and his team.

25 And we would begin rolling productions

1 because we understand there's a desire to get
2 discovery underway. We're not seeking to use the
3 waiver process or a return to the SIC as any form of
4 delay, but instead as a way to accomplish discovery
5 and to accomplish it in a way that can hopefully get
6 as close as possible to 100 percent without having
7 to force the bank secrecy issue, which I don't think
8 anybody really wants to force.

9 And so we would propose that we continue
10 seeking waivers. We had initially in September
11 indicated we thought that by mid-December we could
12 have substantial completion. Because of what's
13 happened in the last two months, we would ask for
14 more time. We would respectfully ask for -- until
15 June of next year to continue seeking waivers.

16 But very importantly, I want to emphasize
17 that will not delay our production and efforts to
18 meet and confer with the plaintiffs on those who
19 have provided waivers in that meantime. And then as
20 that process unfolds, we would seek to get to the --
21 you know, towards a point where we may go back to
22 the SIC at some point next year.

23 THE COURT: All right. So there's a lot
24 there to think about and to chew on.

25 Could you also comment on Mr. Osen's

1 proposal that the parties meet to discuss this
2 broader discovery order, Mr. McGinley?

3 MR. MCGINLEY: Sure, Your Honor.

4 Obviously, if you ask us to meet, we're
5 always happy to meet. We think it's premature. We
6 think that Your Honor set forth a very balanced and
7 reasonable discovery plan that was phased and that
8 was narrowed.

9 Certainly, I would say, Your Honor, that
10 expanding it in a way that does not have customers
11 tied to the alleged -- the banks that they allegedly
12 banked with would be precisely the approach that
13 Your Honor rejected last year. And so if there's an
14 effort to add those named in the third amended
15 complaint, we think if you were to -- if we were to
16 take that approach, it would have to be tied in the
17 same way that the annexes, A and B, were tied to
18 banks where there were allegations of a customer
19 relationship. Otherwise, you're adding hundreds and
20 hundreds of people to every bank. And we think
21 that's just disproportionate, particularly at this
22 phase, without any indication by the plaintiffs as
23 to why they believe that discovery is relevant and
24 proportional.

25 Of course, they've now filed four

1 complaints. If they had reason to believe that
2 certain individuals or entities were connected with
3 the bank, they were capable of pleading that, and we
4 think, at a bare minimum, that would have to be the
5 line that would be drawn.

6 But our general position is, we're pretty
7 far along the way on seeking waivers and taking it
8 in the phase that Your Honor initially set forth.

9 But, absolutely, we think just adding every
10 individual named in the third amended complaint for
11 every single defendant would just create precisely
12 the disproportionate and blunderbuss approach that
13 Your Honor has already rejected at this stage.

14 THE COURT: Mr. McGinley, I completely
15 recall writing that opinion, of course. It was a
16 detailed one. And I do still have deep skepticism
17 about the blunderbuss approach, as I have styled it,
18 not on paper, but in these conferences.

19 But at the same time, how is Mr. Osen to
20 know which bank to ask for records if there is
21 evidence that certain individual or entity is being
22 financed and that there are finances flowing in
23 their direction, you know, without specificity
24 available in the public domain due to bank secrecy,
25 due to the fact that it's foreign banking practices

1 and other reasons that he would not have access or
2 be privy to that information? How is he supposed to
3 figure out which bank is servicing whom?

4 MR. MCGINLEY: So I think, Your Honor, you
5 dealt with this in that opinion. And, of course, I
6 don't need to tell you what you said. But I think
7 the notion of the phased and narrowed approach is
8 that you conduct the first phase of discovery.

9 There may be things that lead Mr. Osen to
10 think that he should ask about other potential
11 customers or individuals by virtue of what he
12 discovers during that discovery. And, of course,
13 Mr. Osen has conducted third-party discovery for the
14 past year. Presumably, the new allegations in the
15 fourth amended complaint are informed by that.

16 And I actually think there may even be --
17 have been a footnote in your opinion, footnote
18 number 15 that, sort of, recognizes that that's the
19 whole virtue of a phased process, is that you begin
20 with the alleged customers that the plaintiffs have
21 reason to believe under Rule 11 that they can make
22 an allegation. You can conduct discovery there.

23 That reduces the potential bank secrecy
24 burden on the defendant, and then -- and, therefore,
25 serves comity principles. And then if there are

1 specific reasons why a plaintiff might say, oh, we
2 think that we may also want discovery on X, Y and Z,
3 they can present those to the defendants, and, if
4 necessary, to the Court, just as you would in any
5 other context under Rule 26.

6 THE COURT: Great. So your
7 counterproposal, if I'm understanding it correctly,
8 is that you would like to get an extension of time
9 to figure out the scope of the universe of persons
10 and entities that are prepared to waive, and you're
11 seeking until June of next year for that, but you
12 will commence disclosing the documents that you have
13 permission to disclose thus far.

14 And you do not object to continuing to meet
15 and confer with Mr. Osen as to possibility of
16 expanding discovery in a phased way?

17 I mean, I'm just trying to understand your
18 actual plan because waiting, you know, seven more
19 months to be -- sort of, be similar to where we are
20 now seems frustrating for all involved, frankly,
21 Mr. McGinley.

22 MR. MCGINLEY: I understand that, Your
23 Honor. I don't mean to suggest that we would just
24 be waiting. I think what we're trying to indicate
25 to you is that we are actively seeking the

1 opportunity to provide discovery, obviously, without
2 being forced to decide whether we have to violate
3 bank secrecy, if there are ways or alternative means
4 to do so.

5 I've indicated we are willing to meet and
6 confer with Mr. Osen with the obvious -- and I --
7 hopefully, you take this as I intend it,
8 respectfully, with the emphatic caveat that just
9 blowing the doors open, we think, is inconsistent
10 with the approach that was set forth in Your Honor's
11 order.

12 And so if you would like us to meet and
13 confer with Mr. Osen on a narrower approach, we're
14 happy to do so. Our starting position is we think
15 that sticking with the Court's order from last year
16 is the right approach. But, of course, if
17 Your Honor wishes us to meet and confer, we are
18 willing to do that.

19 THE COURT: So, Mr. Osen, I certainly don't
20 want to guess your opinion, but I have a feeling I
21 know, at least, elements of it. What would you like
22 to say in response to Mr. McGinley?

23 MR. OSEN: Sure. Just a couple things,
24 briefly, Your Honor.

25 First of all, Your Honor knows better than

1 we do the contents of your own decision from March
2 of last year. But as we understood it, the phased
3 approach that Mr. McGinley references is precisely
4 the approach taken by other courts, including Judge
5 Cohen-Miller, to provide a platform for the
6 defendant to seek letters rogatory and to make that
7 process more easily digestible on the very
8 reasonable theory that if you provide a narrower set
9 of names and scope and that is approved, you could
10 always go back for more. And if it's rejected, you
11 know that the wider and more appropriate broad
12 production order is certainly going to be rejected.

13 So that was, I think -- I think Your Honor
14 expressly said in your decision that you thought the
15 *Miller* case was instructive on that, on that score.
16 And so what we're seeking now is precisely the kind
17 of production order that the Court entered in the
18 *Miller* case, and, frankly, a much broader one that
19 was entered in the *Linde* case and beyond.

20 And, again, the purpose of that is to set
21 the parameters of what needs to be pursued. And,
22 right now what the defendants have done is to take
23 Your Honor's narrower production order for purposes
24 of letters rogatory and defined that as the universe
25 for discovery.

1 So we would propose -- and I'll come back
2 to a couple of other points very briefly, but we
3 would propose that we submit our draft order to the
4 defendants by around December 2nd, we meet and
5 confer the 9th or the 10th. Gives them a week or
6 more to bat it around. And then by December 18th,
7 we either have a joint proposal or we submit our
8 competing proposals for the more comprehensive
9 production order.

10 I'll just say two --

11 THE COURT: Mr. Osen, I just want to --

12 MR. OSEN: Go ahead.

13 THE COURT: I just want to react to one
14 comment.

15 MR. OSEN: Go ahead.

16 THE COURT: So the purpose of the narrower
17 list that I permitted after -- as a result of the
18 March 31, 2023 opinion was not, as you intimate, to
19 test the waters with regard to what Lebanon was
20 likely to do or, frankly, what the defendants were
21 likely to do, but rather it is how I view my
22 obligations under the *Aérospatiale* case out of the
23 Supreme Court. And I'm just going to read it to
24 you.

25 And the Supreme Court made it very clear

1 that "the line between reasonableness and
2 unreasonable in each case must be drawn by the trial
3 court."

4 And "American courts, in supervising
5 pretrial proceedings, shall exercise special
6 vigilance to protect foreign litigants from the
7 danger that unnecessarily or unduly burdensome
8 discovery may place them in a disadvantageous
9 position. Judicial supervision of discovery should
10 always seek to minimize its costs and inconvenience
11 and to prevent improper uses of discovery requests.
12 When it is necessary to seek evidence abroad,
13 however, the district court must supervise pretrial
14 proceedings particularly closely to prevent
15 discovery abuses."

16 And it goes on and on and on. So this was
17 not to test the waters. This was to ensure that we
18 were exercising appropriate comity when dealing with
19 foreign entities and ensuring that we do not put
20 foreign defendants in a position where they are
21 faced with the Hobson's choice.

22 And Mr. McGinley has stated more than once
23 today that it is the defendants' view that that's
24 what you're seeking, to put them into -- sort of,
25 get them painted into the corner so that they can

1 seek sanctions. I mean, this has been a theme
2 throughout this litigation.

3 And I'm not suggesting what your true
4 motivations are. I truly hope that discovery will
5 happen here and that you'll get the information
6 you're seeking so that the case can be adjudicated
7 on the merits, but please don't misunderstand the
8 purpose or the spirit of that footnote 15 and what
9 it was intended to convey and why.

10 MR. OSEN: I appreciate that, Your Honor,
11 and thank you for that.

12 I think the two points I would make, not
13 directly in response to that, but really to frame
14 the overall question is this: Your Honor also said
15 in your order that the defendants were free to seek
16 waivers for customers at that time, in March of
17 2023. They've chosen to wait until after the
18 letters rogatory process was exhausted.

19 Obviously, that's water under the bridge,
20 but that's another year that went by without a
21 waiver process and without a single document being
22 produced. We're now heading into year six of this
23 case, and as far as I'm aware, the defendants
24 haven't produced a single document. That is,
25 believe it or not, even surprising relative to the

1 *Linde v. Arab Bank* case.

2 THE COURT: I saw in your letter, you
3 described the timeline with regard to those other
4 cases. And, you know, I am very concerned.

5 I also note -- and you can tell me,
6 Mr. Osen, if I'm wrong. I feel like a lot of the
7 delays in this case were before my time, in terms of
8 the interlocutory appeals to the circuit, I mean,
9 and waiting on the circuit -- not in this case, but
10 waiting on circuit rulings in other cases.

11 I mean, is that a source of delay that was
12 not present in those other matters?

13 MR. OSEN: It varies, Your Honor. I think
14 the main takeaway here is not why we've had delay
15 until now, but just the reality that that's where
16 we're at.

17 And so to just address one other question
18 or point raised by Mr. McGinley on that score, we
19 don't object, to be clear, to them having an ongoing
20 waiver process through June of next year. For us,
21 that's not an issue. And, frankly, you know, if
22 they came back to the Court in May of next year and
23 said, we have, you know, hope of getting X number of
24 additional waivers and productions, we would be fine
25 with that.

1 The issue is, what is the universe, the
2 playing field under which this entire process is
3 undertaken?

4 We can only state what has occurred in
5 other cases that have been adjudicated on these
6 issues. And in those cases, there is a -- call it
7 comprehensive production order which forms the basis
8 for determining what the universe of compliance is,
9 otherwise, it's a continuously moving, shifting
10 field because even if you got 100 percent compliance
11 and production for the entities under the document
12 production order issued for the letters rogatory,
13 that would be a small fraction of our case.

14 THE COURT: I understand that, but I also
15 have serious questions about your so-called
16 universal production. Like what? The universe --
17 how can you possibly ascertain the universe when, by
18 your own admission, you have not received any
19 documents from the defendants?

20 And this is my concern, Mr. McGinley. I
21 gave the defendants some grace and some time in the
22 March order to get some documents flowing so that we
23 could start to see the lay of the land.

24 Normally, bank subpoenas should be actually
25 issued to banks that have the records, right? And I

1 am not in favor of issuing a bank subpoena to a bank
2 with, you know, a rider that has 600, 700 names on
3 it when there's no basis to reach the conclusion
4 that that bank is servicing those individuals and/or
5 entities, only to have it result in what in my view
6 would be an unduly burdensome discovery request and
7 in violation of my obligations in supervising this
8 type of complex discovery involving foreign
9 entities.

10 So finding the middle ground that you can
11 defend as relevant and proportional, Mr. Osen, is
12 the burden that's going to fall on the plaintiff.
13 But Mr. McGinley, in the absence of any productions
14 from the defense, he can't proceed. And so this is
15 unacceptable. And this is one of the reasons I
16 wanted to get everybody on the phone.

17 The goal in March was -- which is 18 months
18 ago already -- just get things unstuck so that we
19 could start to see the lay of the land. And if you
20 get bank records that show transactions that
21 indicate that so and so is also being serviced by
22 this bank and that there are transactions with this
23 other entity, you can start to get your arms around
24 the universe of information.

25 But, Mr. Osen, I don't foresee a discovery

1 order coming from me that would put 11 foreign
2 defendants -- I think it was three-quarters of the
3 banking industry of Lebanon -- in the position of
4 violating potentially my order with a gigantic rider
5 that's unsupported by any evidence. It's not going
6 to happen, Mr. Osen. So you can rush it all you
7 want, you're going to get a no.

8 MR. OSEN: I'm not trying to rush anything,
9 Your Honor. I'm five years into this without a
10 document.

11 THE COURT: I understand, but you're asking
12 for December 18th or so to submit a proposed order
13 without reference to knowledge of what the documents
14 are likely to show. And my personal perspective on
15 this, having read the Supreme Court case law and all
16 of the cases cited in my opinion with a fine-toothed
17 comb in arriving at that opinion, is that that's not
18 consistent with what I'm supposed to be doing when
19 dealing with foreign entities.

20 MR. OSEN: Well, that's fine, Your Honor,
21 but we'd still want to brief that. You could then
22 deny us, and then we have a record of it because our
23 view is different on that subject.

24 THE COURT: Okay. Well, you would need
25 something pretty powerful to undo the Supreme Court.

1 Mr. McGinley, what do you think is
2 realistic in terms of when discovery can really
3 start to flow and when the parties would be prepared
4 to meaningfully meet and confer with regard to
5 coming up with a more, sort of, broad-based or
6 universal perspective on what the discovery in this
7 case is going to look like?

8 I mean, my concern is that, you know,
9 Mr. Osen is going to want absolutely everything, and
10 the defendants are going to want to keep it as
11 constrained as possible, and I get that. But
12 neither approach is likely to be the appropriate
13 balance and proportional to the needs of the case.

14 So how do we actually get there,
15 Mr. McGinley?

16 MR. MCGINLEY: I understand that,
17 Your Honor. And what we are proposing is on a
18 rolling basis, I think, quite soon.

19 You know, obviously, the one issue we're
20 all dealing with is the ongoing situation in
21 Lebanon, but we think that with respect to, sort of,
22 electronic -- easily obtainable, electronic,
23 automated records like bank statements, we can begin
24 producing those.

25 I don't want to speak for every bank

1 because everybody's situation is different, but we
2 think within the next few months, perhaps even
3 weeks, we can begin producing those documents for
4 those who have waived.

5 THE COURT: And when would you have -- when
6 do you think it's realistic to meet and confer with
7 plaintiffs to work towards a broader discovery
8 order?

9 MR. MCGINLEY: The only reason I pause is I
10 just don't want to say something out of turn with my
11 friends from the various other banks, but I think in
12 the beginning of the new year, we can begin meeting
13 and conferring because I think that, at that point,
14 we will have begun productions, as I just described,
15 and I think there will be some basis on which for us
16 to begin speaking with them at that point.

17 THE COURT: Mr. Osen, what's your reaction
18 to that?

19 MR. OSEN: Your Honor, I don't have
20 anything else to add.

21 THE COURT: Okay. So I think we should
22 look at some -- I think we should pull out the
23 calendar and look at some dates.

24 So first request, which Ms. Osen indicated
25 he does not object to, is moving the final deadline

1 for the defendants to provide an indication as to,
2 kind of, where everything stands vis-à-vis the
3 waiver process.

4 What's a date that you would like,
5 Mr. McGinley?

6 MR. MCGINLEY: We had proposed June. To be
7 frank with Your Honor, I'm not sure the specific
8 date within June is as important as just having that
9 window of time. So I'm just pulling up June here.

10 Perhaps June 14th, and then we meet and
11 confer.

12 THE COURT: 14th is a Saturday.

13 MR. MCGINLEY: Oh, sorry. 13th. 13th.
14 June 13th. Although, Friday the 13th may not be the
15 luckiest.

16 Why don't we say -- just because I'm a
17 superstitious Irishman, why don't we say June 12th.
18 And then we would commit to meeting and confer with
19 the plaintiffs by the 25th.

20 THE COURT: So June 12th will be the report
21 back on where things shook out vis-à-vis the waiver
22 process; is that right, Mr. McGinley?

23 MR. MCGINLEY: That's right, Your Honor.

24 And we appreciate Mr. Osen saying that if
25 it turns out there's a small handful left and we

1 want to continue pursuing them, that he would be
2 graceful at that point, but I think we can put on
3 the calendar the 12th as the date on which we inform
4 the plaintiffs where things have shaken out.

5 THE COURT: Okay.

6 And, you know, I would like a brief status
7 report on that date as well. It doesn't need to be
8 as detailed as whatever you provide to Mr. Osen.
9 Obviously, I'm not as in the weeds vis-à-vis which
10 exact bank accounts are at issue, but I would like
11 to just have some sort of an update by June 12th as
12 to where things stand.

13 With regard to meet -- well, the next date
14 I want to set is a deadline for the parties to
15 commence their conversations with regard to a
16 proposed broader discovery order. And we all knew
17 this day was coming. And so the question is, what
18 does this discovery need to include? What is
19 realistic to include?

20 I don't know, Mr. Osen, without seeing your
21 request, obviously, whether or not it's going to be
22 relevant and proportional or whether it's going to
23 be unduly burdensome within the meaning of the
24 Supreme Court's interpretation of how we need to be
25 extra vigilant and careful in cases involving

1 foreign entities, but when is a realistic date for
2 the parties to commence their conversations about
3 that, Mr. McGinley?

4 MR. MCGINLEY: Again, I'm only hesitating
5 because I'm speaking in some sense on behalf of
6 three banks, but I know I am the designated
7 representative, so I would welcome anybody to jump
8 in and tell me if they disagree with me, but I think
9 I would pick a date in February to begin that
10 conversation.

11 THE COURT: I was thinking January.

12 Mr. Osen suggested December, and he will be
13 submitting to you a proposed order.

14 Mr. Osen, when would you be able to
15 circulate your proposed order?

16 MR. OSEN: Well, I think we proposed
17 December 2nd, but, obviously, if we're going to have
18 this meet and confer in January or February, we can
19 push that date out.

20 THE COURT: To when?

21 MR. OSEN: I guess, if it's a January date,
22 Your Honor, we can submit our proposal to them on
23 December 18th.

24 THE COURT: Does that work for you,
25 Mr. McGinley?

1 MR. MCGINLEY: Yes, Your Honor.

2 THE COURT: Obviously, I recognize that
3 that's one week before the Christmas holiday, and a
4 lot of schools are off. If people have child-care
5 obligations and family commitments, I suspect a lot
6 of people will be in and out in between the 23rd and
7 the 1st or the 2nd.

8 So what are we looking at in terms of
9 mid-January for commencing meet and confer? I
10 recognize there are 11 defendants. I recognize that
11 the banks are based in Lebanon.

12 Can the parties commence their meet and
13 confer no later than -- I feel like January 17th
14 even is cutting it short because of the holidays.

15 January 24th, Mr. McGinley?

16 MR. MCGINLEY: I think that would be fine
17 with us, Your Honor.

18 THE COURT: Any objections from any other
19 banks?

20 Okay. So we'll have -- direct the parties
21 to commence the meet and confer with regard to the
22 proposed discovery order by January 24, 2025.

23 And from there, I'm not going to submit --
24 I'm not going to propose a specific deadline by
25 which the proposed discovery order will need to be

1 submitted because I don't want to necessarily put an
2 artificial end to the parties' meet and confer
3 process. I trust Mr. Osen will keep the case moving
4 along. I know he wants to do that.

5 Mr. Osen, do you want me to have a firm
6 deadline, or do you think we -- you guys can work on
7 your meet and confer? Or I can get a status report,
8 perhaps, by the end of February.

9 What do you think is realistic, sir,
10 Mr. Osen?

11 MR. OSEN: Sure, I think a deadline would
12 be appropriate at the end of February.

13 And, Your Honor, if we are close or we're
14 still conferring on it, obviously, we can ask the
15 Court for an extension.

16 THE COURT: All right. And in the interim,
17 I'm going to direct all of the defendants to start
18 their discovery productions on the current records
19 that are available for production forthwith. No
20 more delays, guys. We've had a protective order in
21 place for a very long time.

22 If you have a reasonable number of customer
23 waivers, the time is now to start to produce that
24 discovery to Mr. Osen. It will certainly, perhaps,
25 inform the conversation with regard to which banks

1 may be burdened with additional discovery requests
2 or not. So there is a benefit for all parties to
3 getting this discovery process underway before
4 Mr. Osen posits his larger discovery order that
5 could increase all defendants' potential search and
6 response obligations, depending upon whether or not
7 I find his request to be relevant and proportional
8 to the needs of the case or unduly burdensome, which
9 we may need to engage another round of briefing
10 about, depending upon how much discovery has been
11 done such that the order is well informed or ill
12 informed. And that's the problem.

13 You guys have had a year and a half to
14 disclose this discovery. And I recognize that
15 you're working with the letters rogatory process,
16 but that nothing about that process prevented
17 anybody from getting customer waivers. Nothing ever
18 prevented anybody from getting customer waivers.
19 And so we're not going to continue to kick the can
20 down the road.

21 As Mr. Osen has indicated, this case is six
22 years old. I recognize there are some procedural
23 history aspects of this case that distinguish it
24 from *Linde* and *Miller* and the other cases, COVID
25 being one of them for this case, not *Linde*. But

1 *Miller*, also over COVID, but that's not an excuse.
2 It's too old.

3 So everybody needs to get this stuff
4 moving. And if we are not able to produce
5 discovery, the defendants well know how that could
6 all shake out down the road with regard to Rule 37.

7 Mr. Osen, are there any other dates that
8 you think we should set today?

9 MR. OSEN: Not that I can think of,
10 Your Honor.

11 THE COURT: Mr. McGinley, any other dates
12 that you think we should set today?

13 MR. MCGINLEY: No, Your Honor. Thank you.

14 THE COURT: Anybody else have any dates
15 they wanted to set, or questions? Anybody from any
16 bank?

17 Okay. Mr. Osen, what else should we try to
18 accomplish today?

19 MR. OSEN: I think that's really it on my
20 agenda. I don't have anything else, Your Honor.

21 THE COURT: Mr. McGinley?

22 MR. MCGINLEY: I agree, Your Honor.

23 THE COURT: All right. I want to thank you
24 all. I know this is a complicated situation, and I
25 know that you're all working hard under complicated

1 circumstances, particularly given the geopolitical
2 situation in Lebanon right now. But I do hope that
3 we can move this along and that we can try to get
4 some discovery flowing so that we're all better
5 informed in the new year.

6 With that, I probably won't see most of you
7 before the holidays. I hope you have a good holiday
8 season, that hopefully many of you are able to take
9 a little bit of time off and enjoy the holidays. So
10 see you in the new year.

11 MR. OSEN: Thank you, Your Honor.

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C E R T I F I C A T E

I, Adrienne M. Mignano, certify that the foregoing transcript of proceedings in the case of Bartlett, et al. v. Societe Generale de Banque au Liban S.A.L; Docket #19CV0007 was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Adrienne M. Mignano
ADRIENNE M. MIGNANO, RPR

Date: November 22, 2024